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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of

Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

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MM Docket No. 87-268

To: The Commission

COMMENTS OF WESTERN NEW YORK PUBLIC BROADCASTING ASSOCIATION

Western New York Public Broadcasting Association ("Association"), through its attorneys, files herewith its Comments in response to the Commission's above-captioned proceeding.

1. The Association is the licensee of noncommercial educational Stations WNED-AM, WNED-FM, WNEQ-TV and WNED-TV, Buffalo, New York, and WNJA(FM), Jamestown, New York, providing diverse public broadcast services to the Western New York region. It has carefully reviewed the Commission's proposals in this important advanced television (ATV) proceeding as well as proposed comments by key parties.

2. Although the Association strongly endorses most of the comments on ATV systems offered by both the Broadcasters Caucus ("Broadcasters") and The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS"), it would like to place additional emphasis on several areas that are of particular concern in its western New York service area. In agreeing with the Broadcasters' major thrust that at this stage of the development of ATV, and with little

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field experience to rely on, it seems essential that the Commission remain as flexible as possible by using Channels 2-6 and 52-69, rather than the core plan proposed. Coverage and interference problems are inevitable with a system that has had relatively little field application, and the additional channels are likely to be needed during the transition to correct expected problems. The Association urges the Commission to favor flexibility and plan on using Channels 2-6 and 52-69.

3. The Association also strongly endorses the points to be made by APTS and PBS regarding the necessity of guaranteeing minimum disruption to translators upon which so much of rural America depends for its free over-the-air television service. The Commission should follow the APTS/PBS recommendations on providing priority to replacing the channels reserved for education when those channels must be used for ATV during the transition process.

4. Despite sophisticated computer projections, no one really knows how ATV will work in the real world -- particularly during the transition period when it will co-exist with NTSC facilities. Again, that argues strongly for the Broadcasters/APTS/PBS position that use of more channels will provide much greater flexibility to correct the unexpected but inevitable problems that will result once ATV stations begin to crowd the spectrum.

5. It is in the area of service replication and maximization that the Association has serious concerns. Both the Broad-

casters and APTS/PBS urge the Commission to pursue a "maximization" principle, and the Commission itself has asked for comments in this area. The Association is concerned that in this proceeding the Commission has an opportunity to at least partially rectify the historic coverage disadvantage UHF stations have worked under. However, in its plan the Commission allows that disadvantage to expand, at least in certain markets, where the VHF/UHF parity gap grows rather than shrinks. The proposed ATV assignments appear to once again favor VHF stations and disadvantage UHF broadcasters.

6. The Buffalo market is an excellent example. The Association's Stations WNED-TV on Channel 17 and WNEQ-TV on Channel *23 would not lose any audience under either the assignments proposed by the Commission or the alternate plan offered by Broadcasters. Indeed, almost perfect replication would apparently be achieved. However, these stations would remain significantly short of gaining coverage in the areas already served by VHF colleagues in the market with NTSC service. To the Association's dismay, both ATV plans would quite significantly increase that disparity. For instance, Station WGRZ-TV, Channel 2, currently has a coverage area in square miles more than 28% larger than that of the Association's larger station, WNED-TV on Channel 17. Under the Commission's plan, the coverage gap grows to more than 39%. In population served the current NTSC service puts Channel 2 about 21% ahead of Channel 17. Under the ATV proposal, the difference would grow to better than 38%. The

Broadcasters' plan, despite spreading assignments across the full band, produces a similar result. The Association feels that the maximization/disparity issue is not adequately addressed in the Commission's proposal and asks the Commission to strengthen provisions to finally equalize coverage among existing area licensees.

7. The Broadcasters' plan briefly notes that special problems will likely occur along the Mexican and Canadian borders. From the perspective of nearly 40 years of broadcasting from an area immediately adjacent to Canada, the Association knows how difficult such conflicts can be to resolve. As the Commission knows, these problems are often extremely intractable and, because of the international nature of the negotiations, can take an extraordinarily long time to bring to an acceptable conclusion. The Association would be less concerned about this issue if its stations had been assigned alternative channels under the ATV plans proposed by Broadcasters. However, that is not the case for the Association or for Station WUTV, Channel 29, another longtime licensee. Even Station WNYO, Channel 49, a much newer station in the market, has alternative channel possibilities, as do local Channels 2, 4 and 7. The Association believes that it is imperative that a method be found to make alternative channels available to border stations in the event Canadian broadcast authorities choose not to accept the Commission plan. The Association intends to work with its regional coordinating committee on these concerns but it anticipates that solutions

will be much easier to achieve with the assignment of alternative channels and with better options in the plan to be adopted.

8. The Association's concerns are heightened by two specific assignments in the region. An Erie, Pennsylvania station has been assigned Channel 16 for ATV. Erie is only about 100 miles from Buffalo. The Association worries about interference with the Association's NTSC service on Channel 17. In addition, Station WTJA, Channel 26, Jamestown, New York, has been assigned ATV Channel 9 in the Broadcasters' plan despite the existence of Station CFTO, one of Toronto's major stations, which operates on NTSC Channel 9. These two situations suggest that the Table of Assignments has serious flaws and strengthen the Association's belief that alternative channels must somehow be found in this region.

9. The Association asks the Commission to understand the difficulties this proceeding poses for a local noncommercial educational licensee without the financial, legal and engineering resources of a large group owner. Only now is the Association beginning to get enough information to fully understand the possible consequences of the current plans. Action on ATV is too important and far reaching to be taken in haste. The Association urges the Commission to take whatever time is necessary to insure that the plan finally adopted is worthy of the significance history will accord it.

10. Finally, the Association desires to remind the Commission that on July 25, 1990 it filed an application for a new

noncommercial educational television station on Channel *46 at Jamestown, New York. A stamped copy of the transmittal letter for that application is attached hereto. That application has been pending with the Commission for over six years. The Association proposes to operate its Jamestown station as a satellite station of its flagship public television Station WNED-TV in Buffalo, New York. The new station at Jamestown will provide a new primary and guaranteed public television service for more than 150,000 persons in Jamestown, Chautauqua County and surrounding environs to the south and southwest of Buffalo and will replace the Association's existing secondary service provided by 1000 watt TV Translator Station W46BA at Jamestown on reserved Channel *46. The application includes an extensive request for waiver of the freeze upon construction permit applications for vacant television allotments inaugurated in Order, Advanced Television Systems, RM-5811, FCC Mimeo 4074, released July 17, 1987. In its Order, the Commission indicated that it would "consider waiver requests on a case-by-case basis for noncommercial educational channels, or for applicants which provide compelling reasons why this freeze should not apply to their particular situations or class of stations." The Association urges the Commission, simultaneously with its deliberations in this proceeding, to grant the Association's requested waiver and to process and grant its long-pending application for a new public television station at Jamestown. It also urges the Commission as a part of its deliberations in this proceeding to

allot an appropriate ATV channel for the Association's use at
Jamestown, New York.

Respectfully submitted,

WESTERN NEW YORK PUBLIC
BROADCASTING ASSOCIATION

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Date: November 22, 1996

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July 25, 1990

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Federal Communications Commission
Office of the Secretary

Ms. Donna Searcy
Secretary, F.C.C.
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Searcy:

On behalf of Western New York Public Broadcasting Association, we are filing herewith, in triplicate on FCC Form 340, its application for a new noncommercial educational television station on Channel *46 at Jamestown, New York. The Association is licensee of noncommercial educational television Station WNED-TV, Buffalo, New York, and proposes to operate the Jamestown station as a satellite station of Station WNED-TV.

The application requests a waiver of the freeze upon construction permit applications for vacant television allotments inaugurated in Order, Advanced Television Systems, RM-5811, FCC Mimeo 4074, released July 17, 1987, for the reasons set forth in Exhibit A to the application.

No fee is required for this filing inasmuch as the applicant is a noncommercial educational broadcast licensee and will operate the proposed facility on a noncommercial educational basis on this reserved noncommercial educational channel. Section 1.1112(c). Report and Order, Gen. Docket 86-385, 2 FCC Rcd. 947, 959 (1987).

Please address any questions concerning this application to this office.

Very truly yours,

SCHWARTZ, WOODS & MILLER

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